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7635146982 MEDTRONIC

NO. 9952 P. 3

MAR 02 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: BOZIDAR Ferek-Petric      Examiner: B. PREITO  
Serial No.: 09/348,506      Group Art Unit: 2142  
Filed: July 7, 1999      Docket: P8027.00  
Title: SYSTEM FOR REMOTE COMMUNICATION WITH A MEDICAL DEVICE

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests review of the Final Rejection mailed December 2, 2005, and upheld in the Advisory Action mailed February 15, 2006. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets, which amount to no more than five (5) pages.

Respectfully submitted,

Date: 3/2/06

  
Daniel G. Chapik  
Reg. 43,424  
Telephone: (763) 514-3066  
Customer No. 27581

ATTORNEY OF RECORD FOR BOZIDAR

CERTIFICATE UNDER 37 CFR §1.8 I hereby certify that this correspondence  
is being sent to telefacsimile No. (571) 273-8300, MAIL STOP AF,  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,  
on March 2, 2006.

Molly McClellan  
Signature

MOLLY MCCLELLAN  
Printed Name

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**APPLICANT ARGUMENTS**

MAIL STOP AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests reconsideration of the Final Rejection mailed December 2, 2005, and upheld in the Advisory Action mailed February 15, 2006.

**Status of Claims**

Claims 1-35 have been cancelled.

Claims 36-39 and 41 were rejected under 35 U.S.C. 103(a) as being unpatentable over Snell U.S. Pat. No. 5,720,771 in view of Frid et al. (U.S. Pat. No. 5,857,967) in further view of Comer, D., Internetworking with TCP/IP, Vol. I, Principles, Protocols and Architecture, 3<sup>rd</sup> Ed., 1995.

Claim 40 was rejected under 35 U.S.C. 103(a) as being unpatentable over Snell in view of Comer in further view of Moore et al. (U.S. Pat. No. 4,750,495).

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Applicant's remarks made in the After Final Response succinctly set forth the issues in the present case and are presented below. In summary, the Examiner has made and maintained a rejection that does not provide a prima facie case of obviousness.

As previously stated, the Examiner has not considered an element of the claims. In order to provide a proper rejection, the claims must be considered as a whole and in their entirety. Claim elements cannot be selectively ignored. Neither can a teaching of a reference be used in one way when evaluating one portion of the claim and in a different way when reading another portion of the same claim.

In the present case, the Snell reference does not teach both the programmer and the client machine as specified in the claims. The references combined with Snell do not address this deficiency.

Applicant pointed out with specificity that an element of the claim was not properly addressed by the rejection. The sum total of the Examiner's response is that Applicant's "arguments are not persuasive." No explanation as to where the missing element is provided; no explanation as to how the Examiner may be construing the reference to cover the claimed elements; no rebuttal of Applicant's arguments; no discussion whatsoever with respect to the fact that the references alone or combined do not teach the claim invention. As such, the rejection is improper and should be withdrawn.

Applicant presents the comments made in the After Final Response:

In claim 36, as an example, the Examiner appears to rely on Snell as teaching all of the elements of the claim except for using two different communication protocols. For that element, the Examiner relies upon Frid et al. In this analysis of Snell, the Examiner has either ignored an element of the claim or inappropriately combined two distinct elements of the claims together and asserted that they are both somehow taught by one element of the Snell

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reference. With respect to Frid, that reference does discuss communication protocol options, but no fair reading of the reference would teach using a first protocol for communication between two specific devices and a different protocol between the same two devices with a further distinction of receiving and/or not receiving "receipts."

In particular, claim 36 includes four distinct components that engage in communication (IMD, programmer, server & client computer):

- 1) IMD to/from programmer
- 2) Programmer to/from server
- 3) Server to/from client computer (1st protocol)
- 4) Server to/from client computer (2nd protocol).

With respect to Snell, the Examiner has indicated that the IMD is element 16. The "programmer" is monitor 10. The "server" or "host" is central monitoring station 12. The Examiner later states that "Snell discloses interconnecting physiological monitors (clients) to a central monitoring station (server)." Of course, in this statement the programmer is notoriously absent.

Snell's monitor 10 is not both the claimed programmer and the claimed client computer. Thus, the analysis in the office action has failed to properly address each element of the claim.

Furthermore, Frid does not teach using different communication protocols between the same two devices at different times. The reference generally teaches network protocols (WAN, LAN, etc.) and the types of physical mediums that may be employed for data transfer.

Thus, no reference or combination of references teaches an IMD in communication with a programmer, the programmer in communication with a server and the server in communication with a client computer using two different protocols. No motivation beyond a desire to forge a rejection exists to modify the

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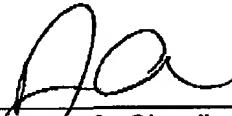
communication pathway or bus between Snell's monitor and the central monitor according to the teaching of Frid. The motivation offered in the rejection is conclusory at best and quite difficult to comprehend. Finally, even if Frid were combined with Snell, which is legally and logically inappropriate, the resultant combination is not the claimed invention.

For these and other reasons, the pending claims are in condition for allowance and notice of the same is requested.

Applicant respectfully requests a favorable decision by the committee.

Respectfully submitted,

Date: 3/2/06

  
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Daniel G. Chapik  
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Customer No. 27581